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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,994	10/15/2003	James B. Prichard	13039:239 (CRAN01-00239)	5835
23990	7590	10/20/2005	EXAMINER	
DOCKET CLERK P.O. DRAWER 800889 DALLAS, TX 75380			KUMAR, RAKESH	
			ART UNIT	PAPER NUMBER
			3654	

DATE MAILED: 10/20/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/685,994	PRICHARD ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Rakesh Kumar	3654	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 June 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)             | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. ____.  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date ____.   | 6) <input type="checkbox"/> Other: ____.                                    |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 112*

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-10 and 17-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
3. Referring to claims 1-10 and 17-20. In the claim 1 line 1 and 3, it is unclear as to what is being referred to as a "drum-type". The term "type" makes the claims vague and indefinite as it is unclear as to what structure or features are encompassed or included in the "type". It is suggested the term "type" be removed from the description, thus the term "drum-type" is understood and broadly construed to mean a "drum" by the examiner. Regarding claim 16, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.
4. Referring to claims 1, 9, 10 and 17. In the claim 1 line 3, it is unclear as to what is being referred by the term "logically". The term "logically" makes the claims vague and indefinite. It is suggested the term "logically" be removed from the description.

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1,2,4,6,8,9-11,13,15,17,18 and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Falk et al. (U.S. Patent Number 5,285,926).

7. Referring to claims 1, 10, and 20. Falk et al. discloses an apparatus and a method to operate a drum merchandising system 10 comprising: transparent plastic trays 42 including one or more mounting supports 44 for mounting the tray 42 on a support 36 within a drum 30 type vending machine, the tray 42 logically divided into a plurality of tray zones (see Figure 4), wherein the tray 42 includes at least one of a slot 88 or a guide 82 selectively receiving a tray subdivider 90 separating one tray zone from another (Col 6 lines 29-40, Col 7 lines 31-47). Regarding claim 10, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

8. Referring to claims 2 and 11. Falk et al. discloses an apparatus and a method to operate a drum merchandising system 10 wherein, the tray 42 includes a plurality of

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slots 88, a plurality of guides 82 (see Figure 4), or both selectively receiving a plurality of tray subdividers 90 separating at least three zones on the tray 42. Regarding claim 11, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

9. Referring to claims 4 and 13. See claim 1. Falk et al. discloses a drum merchandising system 10 further comprising: a center support member 34 on which the at least one tray 42 is mounted; and a vend door 12 disposed proximate to an outer edge of the at least one tray 42, wherein the vend door 12 is selectively movable between a closed position and an open position, wherein the vend door 12, when in the open position, permits access to only one tray zone (Figure 1, 2; Col 5. line 50-65, Col 8 line 29-36). Regarding claim 13, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

10. Referring to claims 6 and 15. Falk et al. discloses a drum merchandising system 10 wherein a distance between the open and closed positions (Col 5 line 57) for the vend door 12 is defined by at least one tray 42 subdividers 70 or 90 (Figure 3; Col 8 line 27-40). These subdividers as disclosed can comprise different size zones thus changing the opening clearance. Regarding claim 1, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would

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inherently be performed when using the apparatus of Falk in its usual and expected fashion. Regarding claim 15, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

11. Referring to claims 8. Falk et al. discloses an enclosure 16 having an opening within at least a sidewall, wherein the vend door 12 is positioned over a portion of the opening when in the closed position (Figure 2); a motor 106 for rotating the center support member 34; and controls that (Col 3 line 11; Col 10 line 65), when actuated (Col 4 line 15), rotate the center support member 34 to position a selected tray zone proximate to the vend door 24 (Col 8 line 27-37).

12. Referring to claims 9 and 18. See claim 1 and 4. Falk et al. discloses a drum merchandising system 10 further comprising: a plurality of trays 42, including the at least one tray 42, each mounted on the center support member 34 at one of a plurality of different levels 40, each tray 42 logically divided into a plurality of tray equal and unequal zones (Figure 4) and including at least one of a slot 88 or a guide 82 selectively receiving a tray subdivider 90 separating one tray zone from another (Figure 2 and 4); and a plurality of vend doors 12 (Figure 1), including the vend door 12, each associated with a different level 40 and each separately selectively movable between an open position and a closed position (Col 5 line 1-65), wherein each vend door 12, when in the

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open position, permits access to only one tray zone on a corresponding tray (Col 8 line 36).

13. Referring to claim 17. See claim above. Falk et al. discloses a drum merchandising system comprising: an enclosure (comprising component members 16, 12, 18 and 32) around at least a portion of a drum perimeter 30; a center support member 34 within the enclosure (comprising component members 16, 12, 18 and 32); at least one tray 42 mounted on the center support member 34 at each of a plurality of different levels 40; each tray 42 logically divided into a plurality of tray zones (Figure 4); at least one tray 42 subdivider 90 received by at least one of a slot 88 or a guide 82 on at least one of the trays 42, the tray 42 subdivider 70 separating one tray zone on the at least one of the trays from another; and a vend door 12 disposed proximate to an opening through the enclosure (comprising component members 16, 12, 18 and 32) at each of the different levels 40, each vend door 12 corresponding to the at least one of the trays 42 having a tray subdivider 90, selectively movable between an open position and a closed position, wherein the vend door 12, when in an open position, and the tray subdivider 90 permit access to only one tray zone on a corresponding tray 42.

***Claim Rejections - 35 USC § 103***

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14. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

15. Claims 5 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falk et al.

16. Referring to claims 5 and 14. Falk et al. discloses a drum merchandising system 10 further comprising: a plurality of trays 42 mounted on the center support member 34 and including the at least one tray 42, wherein the trays are mounted at each level 40 of nine levels (Figure 1; Col 6 lines 29-45; there are nine tray levels 40 shown) spaced apart evenly, wherein each tray 42 may be divided into up to five tray zones (in Falk there are six zones), and wherein the center support member 34 may be selectively rotated to position any selected tray zone on any of the plurality trays proximate to the vend door 12 so that the selected tray zone is accessible when the vend door 12 is in the open position (Col 2 line 11-25, Col 3 line 8, Col 4 line 15). In addition Falk et al discloses associating prices individually with each tray zone on each tray at each level (Col 3 line 32-38; Col 4 line 39-46).

Falk et al. discloses mounting six trays, but does not specifically disclose mounting only five trays to the center support member 34, in addition Falk et al. does not disclose each level of the trays to be five inches apart.



It would have been obvious to one of ordinary skill in the art at the time the invention was made, to dispose only five trays at each level on the center support member 34 versus six as taught by Falk, in addition it would have been further obvious to position each level 40 of trays to be five inches apart from each other. Such a selection would represent a mere design choice of space required for displaying the target items and be well within the level of skill of an artisan. Regarding claim 14, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

17. Claims 3 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Falk et al. in view of Krakauer (U.S. Patent Number 4,317,604).

18. Referring to claims 3 and 12. Falk et al. discloses an apparatus and a method to operate a drum merchandising system 10 where the trays 42 are divided into tray zones (Figure 4, area in between dividers 90) that are one or more of equal or unequal sizes depending on the location of the subdividers 90 in tray 42.

Falk et al. does not disclose the partitioning subdividers 90 to be positioned in a radially askew orientation.

Krakauer discloses the positioning of subdivider 96 in a radially askew orientation in the tray (Figure 4, 5; Col 5 line 62-Col 6 line 15).

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to have modified Falk et al. with the teaching of Krakauer and include subdividers positioned in a radially askew orientation within the tray as taught by Krakauer, in order to further customize the tray zones to the particular item being displayed. Regarding claim 12, although Falk does not explicitly disclose a method of using his apparatus, the method steps recited in the claim would inherently be performed when using the apparatus of Falk in its usual and expected fashion.

19. Claims 7, 16 and 19 rejected under 35 U.S.C. 103(a) as being unpatentable over Falk et al. in view of Varley (U.S. Patent Number 5,313,393).

20. Referring to claims 7, 16 and 19. Falk et al. discloses using a microprocessor to control a solenoid 110 to activate the removal of a plunger 112 disposed in a corresponding series of holes associated with each possible position of the partitioning tray wall dividers 70 and subdividers 70 to exactly register with the appropriate vend door 12 access (Col 8 line 34).

Falk et al. does not disclose using a catch on a tray subdivider for controlling the distance of the vend door opening.

Varley discloses a tray latch pin 57 (a catch) disposed on the outer surface of the tray 43 positioned to coincide with the position of each divider on the tray separating the compartment. Tray latch pin 57 acts in conjunction with a user access door latch 61

to provide a vend door 37 open access to the to the corresponding a tray zone (Figure 4 and 5).

Varley does not disclose positioning the tray latch pin 57 on the partition subdividers dividers.

It would have been obvious to one of ordinary skill in the art at the time the invention was made, to modify Falk et al. with the teachings of Varley and incorporate latch pins disposed on the subdividers to control the size of access to proximate to the position of the subdividers. As a result, the control mechanism will not need to be calibrated once the sizes of the tray zones is changed as different products are set to be displayed.

### ***Conclusion***

21. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kathy Matecki can be reached on (571) 272-6951. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK

A handwritten signature in black ink that reads "Kathy Matecki". The signature is written in a cursive, flowing style.

KATHY MATECKI  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600